

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

ARIGNA TECHNOLOGY LIMITED,
Plaintiff,

v.

GOOGLE LLC,
Defendant.

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Case No. 6:21-cv-1045-ADA

JURY TRIAL DEMANDED

ORDER REGARDING PROTECTIVE ORDER

The parties sent the Court an email submission disputing the entry of a protective order.

The Court hereby resolves the dispute.

Summary of the Issue

Arigna:

Whether the Court should enter the Court's default protective order, as modified to include provisions the parties mutually accepted and a provision allowing secure electronic transfer of source code material.

Google:

Whether the Court should deny Arigna's protective order, which includes a provision to permit secure electronic transfer of source code material which the parties neither mutually accepted nor discussed during meet and confer.

Requested Relief

Arigna requests the Court to enter the attached protective order.

Google requests the Court to deny Arigna's request and enter Google's requested Protective Order, which omits the source code provision and permits the parties to meet and confer in the event source code is to be reviewed or produced.

Arigna's Position

Arigna and Google have been negotiating a protective order for over six weeks. The parties' negotiations have reached an impasse, and Arigna asks the Court to enter its default protective order, as modified to include several additional provisions on which Google and agree and one provision—regarding electronic transfer of source code—that Arigna seeks and Google has not accepted.

The parties have negotiated and mutually accepted several additions to the Court's default protective order. For example, Arigna accepted a provision Google proposed to limit the number of in-house counsel who may view protected material without prior written consent as well as several of Google's proposed source code provisions. Google has similarly accepted provisions Arigna proposed allowing disclosures to mock jurors who have agreed not to disclose the material.

While Arigna and Google have reached these agreements, the parties' latest exchanges of drafts show that no more can be negotiated, as parties continue to propose and reject the same provisions.

Arigna believes the Court's default protective order for patent cases is well-suited to this case, as it was carefully designed to be. Rather than consume the Court's time by going provision by provision through the disputed protective order provisions, Arigna recognizes that the Court's default protective order already represents that compromise. Arigna is satisfied with the Court's default protective order where the parties have not otherwise agreed.

Arigna asks this Court for only one exception: that paragraph 11(l) be changed to allow Source Code Materials to be transferred by secure electronic transfer, rather than only by hard copy or physical media. This addition accomplishes the same goal as the Court's default, *i.e.*, the highest protection of a party's confidential source code. But it also accounts for the reality that secure electronic transfer is necessary to facilitate the process of drafting and reviewing expert reports. Secure electronic transfer of source code materials would allow outside counsel and experts to share draft reports that reference or include source code materials electronically, greatly reducing the complexity of producing and reviewing draft expert reports.

Arigna respectfully asks the Court to enter the attached default protective order that has been modified to include the parties' additional agreed provisions and to allow source code transfer by secure electronic means.

Google's Position

While the parties have made some progress toward agreement through negotiations, Arigna overstates that progress as mutual acceptance of several provisions. Arigna mischaracterizes that its proposed protective order "includes provisions the parties mutually accepted."

Google requests simplifying the dispute by removing provisions about source code entirely. Because the accused features in this case lie in components supplied by third parties, Google is not required to make its own confidential source code for inspection in this case. Arigna, however, insists on keeping source code provisions in the protective order, and goes further by permitting electronic transfer of source code material, a provision that is not found in this Court's default protective order. Arigna's source code requests are premature, as Google has not made available for inspection any source code in this case and Google does not expect to do so for its own confidential source code in this case. Instead, relevant source code in this matter will come

from third party suppliers, who have not had any involvement in the negotiation of the protective order and its source code provisions.

Alternatively, if the Court is inclined to enter a protective order addressing source code, then Arigna's request for electronic transfer of source code should be denied. Arigna provides no support for permitting electronic transfer of source code. As this Court is well-aware, source code is among a company's most valuable and protected assets. The purpose of the protective order is to protect very sensitive information like source code and prevent disclosure, inadvertent or otherwise. Permitting electronic transfer of source code greatly increases the risk of a protective order violation. It is also prejudicial and unfair to third party suppliers who may produce or make available for inspection source code later in this action subject to the protective order, as those third parties have had no opportunity to object to Arigna's electronic transfer provision.

Arigna's rationale for its request focuses on facilitating drafting expert reports, but electronic transfer is unnecessary for that because they instead can cite to Bates pages and line numbers of printed source code pages. Further, Arigna's request is premature, as expert discovery is still months away from now.

If Google or third party suppliers are later in a position to make source code available for inspection, then the parties can revisit then whether the protective order should address source code. Google thus requests the Court enter Google's version of the protective order.

Resolution


The Court generally defaults to its model protective order and deviates as little as possible from its model protective order except by agreement of the parties.

The Court will enter Arigna's version of the protective order, which contains restrictions on using source code like the model protective order. The Court finds no reason to permit secure

electronic transfer and removes this provision. The parties' agreed terms to transfer by hard copy and physical media is convenient enough. Source code is among a company's most valuable and protected assets. Arigna articulates no justification for risking exposure of source code via electronic transfer. The Court likewise sees no reason to delay entering a protective order with source code provisions if third parties are likely to need source code protection.

The Court hereby enters the appended Protective Order.

SIGNED this 12th day of April, 2022.


ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
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ARIGNA TECHNOLOGY LIMITED,
Plaintiff,

v.

GOOGLE LLC,
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Case No. 6:21-cv-1045-ADA

JURY TRIAL DEMANDED

PROTECTIVE ORDER

WHEREAS, Plaintiff Arigna Technology Limited and Defendant Google LLC, hereafter referred to as “the Parties,” believe that certain information that is or will be encompassed by discovery demands by the Parties involves the production or disclosure of trade secrets, confidential business information, or other proprietary information;

WHEREAS, the Parties seek a protective order limiting disclosure thereof in accordance with Federal Rule of Civil Procedure 26(c):

THEREFORE, it is hereby stipulated among the Parties and ORDERED that:

1. Each Party may designate as confidential for protection under this Order, in whole or in part, any document, information, or material that constitutes or includes, in whole or in part, confidential or proprietary information or trade secrets of the Party or a Third Party to whom the Party reasonably believes it owes an obligation of confidentiality with respect to such document, information, or material (“Protected Material”). Protected Material shall be designated by the Party producing it by affixing a legend or stamp on such document, information, or material as follows: “CONFIDENTIAL.” The word “CONFIDENTIAL”

shall be placed clearly on each page of the Protected Material (except deposition and hearing transcripts and natively produced documents) for which such protection is sought. For deposition and hearing transcripts, the word “CONFIDENTIAL” shall be placed on the cover page of the transcript (if not already present on the cover page of the transcript when received from the court reporter) by each attorney receiving a copy of the transcript after that attorney receives notice of the designation of some or all of that transcript as “CONFIDENTIAL.” For natively produced Protected Material, the word “CONFIDENTIAL” shall be placed in the filename of each such natively produced document.

2. Any document produced before issuance of this Order, including pursuant to the Court’s Order Governing Proceedings - Patent Case, with the designation “Confidential” or the like shall receive the same treatment as if designated “CONFIDENTIAL” under this order and any such documents produced with the designation “Confidential - Outside Attorneys’ Eyes Only” shall receive the same treatment as if designated “CONFIDENTIAL - OUTSIDE ATTORNEYS’ EYES ONLY” under this Order, unless and until such document is re-designated to have a different classification under this Order.
3. With respect to documents, information, or material designated “CONFIDENTIAL,” “CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” “CONFIDENTIAL - OUTSIDE ATTORNEYS’ EYES ONLY,” or “CONFIDENTIAL - SOURCE CODE” (“DESIGNATED MATERIAL”),¹ subject to the provisions herein and unless otherwise

¹ The term DESIGNATED MATERIAL is used throughout this Protective Order to refer to the class of materials designated as “CONFIDENTIAL,” “CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” “CONFIDENTIAL - OUTSIDE ATTORNEYS’ EYES ONLY,” or “CONFIDENTIAL - SOURCE CODE,” individually and collectively.

stated, this Order governs, without limitation: (a) all documents, electronically stored information, and/or things as defined by the Federal Rules of Civil Procedure; (b) all pretrial, hearing or deposition testimony, or documents marked as exhibits or for identification in depositions and hearings; (c) pretrial pleadings, exhibits to pleadings and other court filings; (d) affidavits; and (e) stipulations. All copies, reproductions, extracts, digests, and complete or partial summaries prepared from any DESIGNATED MATERIALS shall also be considered DESIGNATED MATERIAL and treated as such under this Order.

4. A designation of Protected Material (*i.e.*, “CONFIDENTIAL,” “CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” “CONFIDENTIAL - OUTSIDE ATTORNEYS’ EYES ONLY,” or “CONFIDENTIAL - SOURCE CODE”) may be made at any time. Inadvertent or unintentional production of documents, information, or material that has not been designated as DESIGNATED MATERIAL shall not be deemed a waiver in whole or in part of a claim for confidential treatment. Any party that inadvertently or unintentionally produces Protected Material without designating it as DESIGNATED MATERIAL may request destruction of that Protected Material by notifying the recipient(s), as soon as reasonably possible after the producing Party becomes aware of the inadvertent or unintentional disclosure, and providing replacement Protected Material that is properly designated. The recipient(s) shall then destroy all copies of the inadvertently or unintentionally produced Protected Materials and any documents, information, or material derived from or based thereon.
5. “CONFIDENTIAL” documents, information, and material may be disclosed only to the following persons, except upon receipt of the prior written consent of the designating party,

upon order of the Court, or as set forth in paragraph 15 herein:

- (a) outside counsel of record in this Action² for the Parties;
- (b) employees of such counsel assigned to and reasonably necessary to assist such counsel in the litigation of this Action;
- (c) up to two in-house counsel for the Parties who either have responsibility for making decisions dealing directly with the litigation of this Action, or who are assisting outside counsel in the litigation of this Action;
- (d) Up to and including three (3) designated representatives of each of the Parties to the extent reasonably necessary for the litigation of this Action, except that any Party may in good faith request the other Party's consent to designate one or more additional representatives, the other Party shall not unreasonably withhold such consent, and the requesting Party may seek leave of Court to designate such additional representative(s) if the requesting Party believes the other Party has unreasonably withheld such consent.
- (a) Outside consultants or experts retained for the purpose of this litigation, provided that: (1) such consultants or experts are not presently employed by the Parties or of an affiliate of a Party hereto for purposes other than this Action³; (2) before access is given, the consultant or expert has completed the Undertaking attached as Appendix A hereto and the same is served upon the producing Party with a current curriculum vitae of the consultant or expert, including a list of other cases in which the individual has provided a report or testified (at trial or deposition) and a list of companies that the individual has been employed by or provided consulting services pertaining to the field of the invention of the patent(s)-in-suit or the products accused of infringement within the last four years and a brief description of the subject matter of the consultancy or employment, at least ten (10) days before access to the Protected Material is to be given to that consultant or expert to object to and notify the receiving Party in writing that it objects to disclosure of Protected Material to the consultant or expert. The Parties agree to promptly confer and use good faith to resolve any such objection. If the Parties are unable to resolve any objection, the objecting Party may file a motion with the Court within fifteen (15) days of receipt of the notice, or within such other time as the Parties may agree, seeking a protective order with respect to the proposed disclosure. The objecting Party shall have the burden of proving the need for a protective order. No disclosure shall occur until all such objections are resolved by agreement or Court order.
- (e) independent litigation support services, including persons working for or as court reporters, graphics or design services, jury or trial consulting services, and

² This "Action" means Case No. 6:21-cv-1045-ADA.

³ For avoidance of doubt, an independent expert or consultant retained (as opposed to employed) by a Party on another litigation would not be precluded under this section.

- photocopy, document imaging, and database services retained by counsel and reasonably necessary to assist counsel with the litigation of this Action;
- (f) mock jurors who have signed an undertaking or agreement agreeing not to publicly disclose Protected Material and to keep any information concerning Protected Material confidential;
 - (g) any mediator who is assigned to hear this matter, and his or her staff, subject to their agreement to maintain confidentiality to the same degree as required by this Protective Order; and
 - (h) the Court and its personnel.
6. A Party shall designate documents, information, or material as “CONFIDENTIAL” only upon a good faith belief that the documents, information, or material contains confidential or proprietary information or trade secrets of the Party or a Third Party to whom the Party reasonably believes it owes an obligation of confidentiality with respect to such documents, information, or material.
7. Documents, information, or material produced in this Action, including but not limited to Protected Material designated as DESIGNATED MATERIAL, (i) shall be used only for prosecuting, defending, or attempting to settle this Action, (ii) shall not be used for any other purpose. Any person or entity who obtains access to DESIGNATED MATERIAL or the contents thereof pursuant to this Order shall not make any copies, duplicates, extracts, summaries, or descriptions of such DESIGNATED MATERIAL or any portion thereof except as may be reasonably necessary in the litigation of this Action. Any such copies, duplicates, extracts, summaries, or descriptions shall be classified DESIGNATED MATERIALS and subject to all of the terms and conditions of this Order.
8. To the extent a producing Party believes that certain Protected Material qualifying to be designated CONFIDENTIAL is so sensitive that its dissemination deserves even further limitation, the producing Party may designate such Protected Material “CONFIDENTIAL

- ATTORNEYS' EYES ONLY" or "CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY," or to the extent such Protected Material includes computer source code and/or live data (that is, data as it exists residing in a database or databases) ("Source Code Material"), the producing Party may designate such Protected Material as "CONFIDENTIAL - SOURCE CODE."

9. For Protected Material designated CONFIDENTIAL - ATTORNEYS' EYES ONLY, access to, and disclosure of, such Protected Material shall be limited to individuals listed in paragraphs 5(a-c) and (e-j); provided, however, that access by in-house counsel pursuant to paragraph 5(c) be limited to in-house counsel who exercise no competitive decision-making authority on behalf of the client and nothing in this paragraph 9 precludes outside counsel for a Party from informing their client(s) of high-level damages information, such as discussing estimated damages to aid in settlement discussions and advising on damages models.
10. For Protected Material designated CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY, access to, and disclosure of, such Protected Material shall be limited to individuals listed in paragraphs 5(a-b) and (e-j); provided, however, that the designating Party shall accommodate reasonable requests to provide summary information to in-house counsel designated pursuant to paragraph 5(c) who exercise no competitive decision-making authority on behalf of the client and reasonably require access to such information.
11. For Protected Material designated CONFIDENTIAL - SOURCE CODE, the following additional restrictions apply:
 - (a) Access to a Party's Source Code Material shall be provided only on "stand-alone" computer(s) (that is, the computer may not be linked to any network, including a local area network ("LAN"), an intranet or the Internet).

- (b) The stand-alone computer(s) may be connected to (i) a printer, or (ii) a device capable of temporarily storing electronic copies solely for the limited purposes permitted pursuant to paragraphs 11(h and k) below. Additionally, except as provided in paragraph 11(k) below, the stand-alone computer(s) may only be located within the continental United States at the offices of the producing Party's outside counsel or its vendors. Use or possession of any input/output device (e.g., USB memory stick, mobile phone or tablet, camera or any camera-enabled device, CD, floppy disk, portable hard drive, laptop, or any device that can access the Internet or any other network or external system, etc.) is prohibited while accessing the computer containing the source code. All persons entering the locked room containing the stand-alone computer(s) must agree to affirm that they are not carrying any prohibited items before they will be given access to the stand-alone computer(s). The producing Party may periodically "check in" on the activities of the receiving Party's representatives during any stand-alone computer review and may visually monitor the activities of the receiving Party's representatives from outside the room in which the stand-alone computer(s) is located, but only to ensure that no unauthorized electronic records of the Source Code Material and no information concerning the Source Code Material are being created or transmitted in any way. The producing Party may not record (visually, audibly or by other means) the activities of the receiving Party's representatives.
- (c) The receiving Party shall make reasonable efforts to restrict its requests for such access to the stand-alone computer(s) to normal business hours, which for purposes of this paragraph shall be 8:00 a.m. through 6:00 p.m. However, upon reasonable notice from the receiving Party, the producing Party shall make reasonable efforts to accommodate the receiving Party's request for access to the stand-alone computer(s) outside of normal business hours. The Parties agree to cooperate in good faith such that maintaining the producing Party's Source Code Material at the offices of its outside counsel or its vendors shall not unreasonably hinder the receiving Party's ability to efficiently and effectively conduct the prosecution or defense of this Action.
- (d) The producing Party shall provide the receiving Party with information explaining how to start, log on to, and operate the stand-alone computer(s) in order to access the produced Source Code Material on the stand-alone computer(s).
- (e) The producing Party will produce Source Code Material in computer searchable format on the stand-alone computer(s) as described above.
- (f) Access to Source Code Material shall be limited to outside counsel and up to three (3) outside consultants or experts⁴ (*i.e.*, not existing employees or affiliates of a

⁴ For the purposes of this paragraph, an outside consultant or expert is defined to include the outside consultant's or expert's direct reports and other support personnel, such that the disclosure to a consultant or expert who employs others within his or her firm to help in his or her analysis shall

Party or an affiliate of a Party or competitor identified by the Producing Party with reasonable specificity) retained for the purpose of this litigation and approved to access such Protected Materials pursuant to paragraph 5(e) above. A receiving Party may include excerpts of Source Code Material in an exhibit to a pleading, expert report, or deposition transcript (collectively, "Source Code Exhibits"), provided that the Source Code Exhibits are appropriately marked under this Order, restricted to those who are entitled to have access to them as specified herein, and, if filed with the Court, filed under seal in accordance with the Court's rules, procedures, and orders.

- (g) To the extent portions of Source Code Material are quoted in a Source Code Exhibit, either (1) the entire Source Code Exhibit will be stamped and treated as CONFIDENTIAL - SOURCE CODE or (2) those pages containing quoted Source Code Material will be separately stamped and treated as CONFIDENTIAL - SOURCE CODE.
- (h) Except as set forth in paragraph 11(k) below, no electronic copies of Source Code Material shall be made without prior written consent of the producing Party, except as necessary to create documents that, pursuant to the Court's rules, procedures, and order, must be filed or served electronically.
- (i) The receiving Party shall be permitted to make a reasonable number of printouts and photocopies of Source Code Material, which shall presumptively be a total of ten (10), all of which shall be designated and clearly labeled "CONFIDENTIAL - SOURCE CODE," and the receiving Party shall maintain a log of all such files that are printed or photocopied.
- (j) Should such printouts or photocopies be permissibly transferred back to electronic media, such media shall be labeled "CONFIDENTIAL - SOURCE CODE" and shall continue to be treated as such.
- (k) If the receiving Party's outside counsel, consultants, or experts obtain printouts or photocopies of Source Code Material, the receiving Party shall ensure that such outside counsel, consultants, or experts keep the printouts or photocopies in a secured locked area in the offices of such outside counsel, consultants, or expert. The receiving Party may also temporarily keep the printouts or photocopies at: (i) the Court for any proceedings(s) relating to the Source Code Material, for the dates associated with the proceeding(s); (ii) the sites where any deposition(s) relating to the Source Code Material are taken, for the dates associated with the deposition(s); and (iii) any intermediate location reasonably necessary to transport the printouts or photocopies (*e.g.*, a hotel prior to a Court proceeding or deposition), provided that

count as a disclosure to a single consultant or expert, provided that such personnel helping in the analysis of Source Code Material shall be disclosed pursuant to Paragraph 5(f).

the printouts or photocopies are kept in a secure manner that ensures access is limited to the persons authorized under this Order.

- (l) A producing Party's Source Code Material may only be transported by the receiving Party at the direction of a person authorized under paragraph 11(f) above to another person authorized under paragraph 11(f) above on paper or removable electronic media (*e.g.*, a DVD, CD-ROM, or flash memory "stick") via hand carry, Federal Express, or other similarly reliable courier. Source Code Material may not be transported or transmitted electronically over a network of any kind, including a LAN, an intranet, or the Internet.
- (m) The receiving Party's outside counsel and/or expert shall be entitled to take notes relating to the source code but may not copy any portion of the source code into the notes. No copies of all or any portion of the source code may leave the room in which the source code is inspected except as otherwise provided herein. Further, no other written or electronic record of the source code is permitted except as otherwise provided herein. No notes shall be made or stored on the inspection computer, or left behind at the site where the inspection computer is made available, and any such notes shall be deleted or destroyed by the producing Party, without reviewing the substance of the notes, upon discovery. Notwithstanding the foregoing, any such notes shall be stamped and treated as "CONFIDENTIAL - SOURCE CODE."
- (n) A list of names of persons who will review Source Code Material on the stand-alone computer(s) will be provided to the producing Party in conjunction with any written (including email) notice requesting inspection. Prior to the first inspection of any Source Code Material on the stand-alone computer(s), the receiving Party shall provide five (5) business days' notice to schedule the initial inspection with the producing Party. The receiving Party shall provide three (3) business days' notice in advance of scheduling any additional inspections. Such notice shall include the names and titles for every individual from the receiving Party who will attend the inspection. The producing Party may maintain a daily log of the names of persons who enter the locked room to view the source code and when they enter and depart.
- (o) The receiving Party's outside counsel shall maintain a log of all copies of the Source Code Printouts (received from a producing Party) that are delivered by the receiving Party to any person. The log shall include the names of the recipients and reviewers of copies and locations where the copies are stored. Upon request by the producing Party, the receiving Party shall provide reasonable assurances and/or descriptions of the security measures employed by the receiving Party and/or person that receives a copy of any portion of the source code.
- (p) All copies of any portion of the Source Code Printouts shall be securely destroyed if they are no longer in use. Copies of Source Code Printouts that are marked as deposition exhibits shall not be provided to the Court Reporter or attached to

deposition transcripts; rather, the deposition record will identify the exhibit by its production numbers.

12. Any attorney representing a Party, whether in-house or outside counsel, and any person associated with a Party and permitted to receive the other Party's Protected Material that are technical in nature (e.g., non-damages) and is designated CONFIDENTIAL - ATTORNEYS' EYES ONLY, CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY, and/or CONFIDENTIAL - SOURCE CODE (collectively "HIGHLY SENSITIVE MATERIAL"), who obtains, receives, has access to, or otherwise learns, in whole or in part, said Party's HIGHLY SENSITIVE MATERIAL under this Order shall not prepare, prosecute, supervise, or assist in the preparation or prosecution of any patent application pertaining to the Field of the Invention of the patents-in-suit during the pendency of this Action and for one year after its conclusion, including any appeals. "Field of Invention" refers to (a) radio frequency (RF) power amplifiers and power detection, and phase correction techniques and circuits, (b) any products, services, or systems accused of infringement in this Action, or (c) the patents asserted in this Action and any patent or application claiming priority to or otherwise related to the patents asserted in this Action. To ensure compliance with the purpose of this provision, each Party shall create an "Ethical Wall" between those persons with access to HIGHLY SENSITIVE MATERIAL and any individuals who prepare, prosecute, supervise or assist in the preparation or prosecution of any patent application pertaining to the Field of Invention of the patents in suit. Nothing in this Order shall prevent a person with access to HIGHLY SENSITIVE MATERIAL from participating in a PTO proceeding, e.g., IPR or PGR, except for that person shall not participate—directly or indirectly—in the amendment of any claim(s).
13. Nothing in this Order shall require production of documents, information, or other material

that a Party contends is protected from disclosure by the attorney-client privilege, the work product doctrine, or other privilege, doctrine, or immunity. If documents, information, or other material subject to a claim of attorney-client privilege, work product doctrine, or other privilege, doctrine, or immunity is inadvertently or unintentionally produced, such production shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any such privilege, doctrine, or immunity. Any Party that inadvertently or unintentionally produces documents, information, or other material it reasonably believes are protected under the attorney-client privilege, work product doctrine, or other privilege, doctrine, or immunity may obtain the return of such documents, information, or other material by promptly notifying the recipient(s) and providing a privilege log for the produced documents, information, or other material. The recipient(s) shall gather and return all copies of such documents, information, or other material to the producing Party, except for any pages containing privileged or otherwise protected markings by the recipient(s), which pages shall instead be destroyed and certified as such to the producing Party.

14. There shall be no disclosure of any DESIGNATED MATERIAL by any person authorized to have access thereto to any person who is not authorized for such access under this Order. The Parties are hereby ORDERED to safeguard all such documents, information, and material to protect against disclosure to any unauthorized persons or entities.
15. Nothing contained herein shall be construed to prejudice any Party's right to use any DESIGNATED MATERIAL in taking testimony at any deposition or hearing provided that the DESIGNATED MATERIAL is only disclosed to a person(s) who is: (i) eligible to have access to the DESIGNATED MATERIAL by virtue of his or her employment with the designating party, (ii) identified in the DESIGNATED MATERIAL as an author,

addressee, or copy recipient of such information; (iii) although not identified as an author, addressee, or copy recipient of such DESIGNATED MATERIAL, has, in the ordinary course of business, seen such DESIGNATED MATERIAL; (iv) a current or former officer, director or employee of the Producing party; (v) counsel for a Party, including outside counsel and in-house counsel (subject to paragraphs 5, 9, and 10 of this Order); (vi) an independent contractor, consultant, and/or expert retained for the purpose of this litigation; (vii) court reporters and videographers; (viii) the Court; or (ix) or other persons entitled hereunder to access to DESIGNATED MATERIAL. DESIGNATED MATERIAL shall not be disclosed to any other persons unless prior authorization is obtained from counsel representing the producing Party or from the Court.

16. Parties may, at the deposition or hearing or within thirty (30) days after receipt of a deposition or hearing transcript, designate the deposition or hearing transcript or any portion thereof as “CONFIDENTIAL,” “CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” “CONFIDENTIAL - OUTSIDE ATTORNEYS’ EYES ONLY,” or “CONFIDENTIAL - SOURCE CODE” pursuant to this Order. Access to the deposition or hearing transcript so designated shall be limited in accordance with the terms of this Order. Until expiration of the 30-day period, the entire deposition or hearing transcript shall be treated as CONFIDENTIAL - OUTSIDE ATTORNEYS’ EYES ONLY.
17. Any DESIGNATED MATERIAL that is filed with the Court shall be filed under seal and shall remain under seal until further order of the Court. The filing party shall be responsible for informing the Clerk of the Court that the filing should be sealed and for placing the legend “FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER” above the caption and conspicuously on each page of the filing. Exhibits to a filing shall

conform to the labeling requirements set forth in this Order. If a pretrial pleading filed with the Court, or an exhibit thereto, discloses or relies on DESIGNATED MATERIAL, such confidential portions shall be redacted to the extent necessary and the pleading or exhibit filed publicly with the Court. At any point, a Party may seek to designate and protect previously produced Protected Material as Highly Sensitive Documents/Information (HSD/HSI).

18. The Order applies to pretrial discovery. Nothing in this Order shall be deemed to prevent the Parties from introducing any DESIGNATED MATERIAL into evidence at the trial of this Action, or from using any information contained in DESIGNATED MATERIAL at the trial of this Action, subject to any pretrial order issued by this Court.
19. A Party may request in writing to the other Party that the designation given to any DESIGNATED MATERIAL be modified or withdrawn. If the designating Party does not agree to re-designation within ten (10) days of receipt of the written request, the requesting Party may apply to the Court for relief. Upon any such application to the Court, the burden shall be on the designating Party to show why its classification is proper. Such application shall be treated procedurally as a motion to compel pursuant to Federal Rule of Civil Procedure 37, subject to the Rule's provisions relating to sanctions. In making such application, the requirements of the Federal Rules of Civil Procedure and the Local Rules of the Court shall be met. Pending the Court's determination of the application, the designation of the designating Party shall be maintained.
20. Each outside consultant or expert to whom DESIGNATED MATERIAL is disclosed in accordance with the terms of this Order shall be advised by counsel of the terms of this Order, shall be informed that they are subject to the terms and conditions of this Order,

and shall sign an acknowledgment that they have received a copy of, have read, and have agreed to be bound by this Order. A copy of the acknowledgment form is attached as Appendix A.

21. To the extent that any discovery is taken of persons who are not Parties to this Action (“Third Parties”) and in the event that such Third Parties contend the discovery sought involves trade secrets, confidential business information, or other proprietary information, then such Third Parties may agree to be bound by this Order.
22. To the extent that discovery or testimony is taken of Third Parties, the Third Parties may designate as “CONFIDENTIAL,” “CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” “CONFIDENTIAL - OUTSIDE ATTORNEYS’ EYES ONLY,” and/or “CONFIDENTIAL - SOURCE CODE” any documents, information, or other material, in whole or in part, produced or given by such Third Parties. The Third Parties shall have ten (10) days after production of such documents, information, or other materials to make such a designation. Until that time period lapses or until such a designation has been made, whichever occurs sooner, all documents, information, or other material so produced or given shall be treated as “CONFIDENTIAL - OUTSIDE ATTORNEYS’ EYES ONLY” in accordance with this Order. Where a Third Party designates any documents, information or other material as provided herein, experts previously disclosed and approved hereunder prior to said Third Party’s production of any Protected Material need not be disclosed to said Third Party. Subsequently disclosed experts need not be disclosed to said Third Party before that Third Party’s Protected Material may be disclosed thereto.
23. If a Party is served with a subpoena issued by a court, arbitral, administrative, or legislative body, or with a court order issued in other litigation that compels disclosure of any

information or items designated in this action as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL – SOURCE CODE” that Party must:

(a) promptly notify in writing the designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the person who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating Party whose Protected Material may be affected.

If the designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL – SOURCE CODE” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the designating Party’s permission. The designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a receiving Party in this action to disobey a lawful directive from another court.

24. Within thirty (30) days of final termination of this Action, including any appeals, all DESIGNATED MATERIAL, including all copies, duplicates, abstracts, indexes, summaries, descriptions, and excerpts or extracts thereof (excluding excerpts or extracts

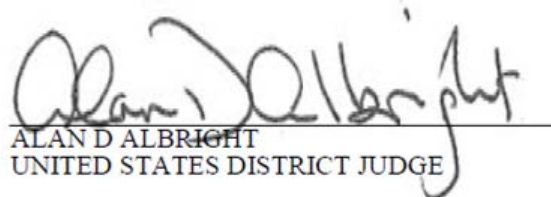
incorporated into any privileged memoranda of the Parties), shall at the producing Party's election either be returned to the producing Party or be destroyed. The receiving Party shall verify the return or destruction by affidavit furnished to the producing Party, upon the producing Party's request.

25. The failure to designate documents, information, or material in accordance with this Order and the failure to object to a designation at a given time shall not preclude the filing of a motion at a later date seeking to impose such designation or challenging the propriety thereof. The entry of this Order and/or the production of documents, information, or material hereunder shall in no way constitute a waiver of any objection to the furnishing thereof, all such objections being hereby preserved.
26. Any Party knowing or believing that any other party is in violation of or intends to violate this Order and has raised the question of violation or potential violation with the opposing party and has been unable to resolve the matter by agreement may move the Court for such relief as may be appropriate in the circumstances. Pending disposition of the motion by the Court, the Party alleged to be in violation of or intending to violate this Order shall discontinue the performance of and/or shall not undertake the further performance of any action alleged to constitute a violation of this Order.
27. Production of DESIGNATED MATERIAL by any Party shall not be deemed a publication of the documents, information, or material (or the contents thereof) produced so as to void or make voidable whatever claim the Parties may have as to the proprietary and confidential nature of the documents, information, or other material or its contents.
28. Nothing in this Order shall be construed to effect an abrogation, waiver, or limitation of any kind on the rights of each of the Parties to assert any applicable discovery or trial

privilege.

29. The parties agree that drafts of any expert report, declaration, or disclosure, including drafts of reports, as well as any notes made by experts, are protected work product and shall not be discoverable regardless of the form of the draft and notes, unless the expert relies on the aforementioned as a basis for his or her opinion and the information contained is not otherwise disclosed. The parties further agree that communications of any form relating to this action between (a) a party to these actions, a representative of a party, or the parties' attorneys and (b) the parties' expert(s), whether testifying or non-testifying, are protected work product and shall not be discoverable, except to the extent the communications identify facts, data, or assumptions that the parties' attorneys provided and that the expert(s) relied upon in forming any opinions expressed or to be expressed in an expert report or trial testimony and are not otherwise disclosed.
30. Each of the Parties shall also retain the right to file a motion with the Court (a) to modify this Order to allow disclosure of DESIGNATED MATERIAL to additional persons or entities if reasonably necessary to prepare and present this Action; and (b) to apply for additional protection of DESIGNATED MATERIAL.

Entered this 12th day of April, 2022.


ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

ARIGNA TECHNOLOGY LIMITED,
Plaintiff,

v.

GOOGLE LLC,
Defendant.

§
§
§
§
§

Case No. 6:21-cv-1045-ADA

JURY TRIAL DEMANDED

**APPENDIX A
UNDERTAKING OF EXPERTS OR CONSULTANTS REGARDING
PROTECTIVE ORDER**

I, _____, declare that:

1. My address is _____.

My current employer is _____.

My current occupation is _____.

2. I have received a copy of the Protective Order in this action. I have carefully read and understand the provisions of the Protective Order.

3. I will comply with all of the provisions of the Protective Order. I will hold in confidence, will not disclose to anyone not qualified under the Protective Order, and will use only for purposes of this action any information designated as “CONFIDENTIAL,” “CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” “CONFIDENTIAL - OUTSIDE ATTORNEYS’ EYES ONLY,” or “CONFIDENTIAL - SOURCE CODE” that is disclosed to me.

4. Promptly upon termination of these actions, I will return all documents and things designated as “CONFIDENTIAL,” “CONFIDENTIAL - ATTORNEYS’ EYES ONLY,”

“CONFIDENTIAL - OUTSIDE ATTORNEYS’ EYES ONLY,” or “CONFIDENTIAL - SOURCE CODE” that came into my possession, and all documents and things that I have prepared relating thereto, to the outside counsel for the Party by whom I am employed.

5. I hereby submit to the jurisdiction of this Court for the purpose of enforcement of the Protective Order in this action.

I declare under penalty of perjury that the foregoing is true and correct.

Signature _____

Date _____